EARLY
♦
LUCARELLI
♦
SWEENEY &
♦
STRAUSS

ATTORNEYS AT LAW
An Association of Professional L.L.C.s

EARLY, LUCARELLI, SWEENEY &
MEISENKOTHEN L.L.C.
One Century Tower, 11th Floor
265 Church Street
P.O. Box 1866
New Haven, CT 06508-1866
(203) 777-7799 (Fax) (203) 785-1671
web site: www.elslaw.com

Please Reply to New Haven

JAMES F. EARLY ♦
ROBERT J. SWEENEY *
ETHAN EARLY **
CHRISTOPHER MEISENKOTHEN ***
BRIAN P EARLY ⌘
JENNIFER R. LUCARELLI **
BRIAN P. KENNEY *
DONNI E YOUNG ♦♦♦
RICHARD P. BULLOCK ♦♦♦
ELIZABETH R. TAVELLI *
CATHERINE FERRANTE ♆

LINDALEA P. LUDWICK ♆
Of Counsel
RON MICHAEL MENEO, LLC
Of Counsel

EARLY & STRAUSS, L.L.C.
360 Lexington Avenue
New York, NY 10017
(212) 986-2233 (Fax) (212) 986-2255
web site: www.elslaw.com

JAMES F. EARLY ♦
MARK G. STRAUSS ††
ETHAN EARLY **
BRIAN P. EARLY ⌘
MARK BIBRO ♢
JASON M. HODRINSKY ♆
DERELL D. WILSON ⌘
JESSICA A. WOODHOUSE **

LINDALEA P. LUDWICK ♆
Of Counsel

EARLY, LUCARELLI, SWEENEY & STRAUSS
1 Richmond Square
Providence, RI 02906

♦ CT & NH Bar
♆ CT Bar
* CT & RI Bar
†† NY, NJ, PA, DC, MO & IL Bar
** CT & NY Bar
♢ NY Bar
*** CT, NY, MA, ME & GA Bar
♦♦♦ LA & RI Bar
♆♆ CT, NY & CA Bar
⌘ CT, RI & MA Bar
⌘⌘ NY, CA & DC Bar
♢ CT, NY & NJ Bar
** NY & NJ Bar

Testimony of Christopher Meisenkothen, Esq. in support of S.B. 920 – An Act Concerning the Statute of Limitations in Carbon Monoxide Poisoning Cases

Chairman Coleman, Chairman Fox and members of the Judiciary Committee:

My name is Christopher Meisenkothen and I am a lawyer with Early, Lucarelli, Sweeney & Meisenkothen, LLC, in New Haven, CT. Like Glenn and Kelly Anderson, I am also a resident of Durham and a constituent of Senator Meyer's. I testify today in support of SB 920 and urge its passage.

SB 920 solves an important problem with the existing statute of limitation for negligence claims arising from the latent effects of carbon monoxide poisoning. Many of these claims are currently governed by the existing general negligence statute of limitation (C.G.S. § 52-584), which provides that victims of negligence may file a claim within two years of discovering the nature of their injury as long as they file the claim within *three* years of the actual negligent act. This three-year repose period has the effect of extinguishing *all* claims for carbon monoxide poisoning, even those resulting from long-latent injuries that only reveal themselves many years after the initial exposure event. SB 920 is consistent with the long-established public policy of this State to allow claims for latent injuries to proceed without regard to arbitrary, unrealistic and unfair repose periods.

One minor change, however, should be made to the currently proposed language in SB 920. The Bill as presently written would actually *reduce* the time to file a claim in those cases where the carbon monoxide poisoning occurred as the result of a defective product (a defective furnace, for example), so the clause "and 52-577a" should be deleted and replaced with "and except as provided by section 52-577a in product liability claims," which would preserve the existing statute of limitation for those cases arising under the Product Liability Act.

This Bill creates no new cause of action – Victims of the latent effects of carbon monoxide poisoning already have a right to pursue litigation under the existing negligence statute (52-584) but that statute arbitrarily and unfairly extinguishes those rights after a short repose period of only three years.

SB 920 would create a pure "discovery rule" for negligence claims arising from carbon monoxide poisoning and would clearly state that the statute of limitation begins to run from the date that the injured person knows or reasonably should know that her injuries were caused by carbon monoxide poisoning, even if those injuries are latent in nature and arise many years after the initial event.

Fears of creating "unsound precedent" or "unfairness" to defendants or concerns about "predictability" are unsubstantiated and unrealistic. Many statutes of limitation *currently in effect* are statutes based on the exact same type of "discovery rule:"

1. § 31-294c(a) – Workers' compensation claims for occupational disease.
2. § 52-584 – Negligence claims, including medical malpractice claims.
3. § 52-577a(a) – Product liability claims.
4. § 52-577c(b) – Claims arising from exposures to hazardous chemicals that are released into the environment.
5. § 52-583 – Civil actions against sheriffs and state marshals – 2 years after the right of action "accrues"
6. § 52-581 – Cause of action on an oral contract – 3 years after the right of action "accrues"
7. Workers' compensation claims for repetitive trauma – Repetitive trauma claims have a quasi-discovery rule in that the one-year statute of limitation does not begin to run until the injured party leaves the injurious work environment.

Indeed, the Connecticut Supreme Court and Appellate Court have reaffirmed these fundamental principles many times over the years in seminal cases such as *Catz v. Rubenstein*, 201 Conn. 39 (1986); *Champagne v. Raybestos-Manhattan*, 212 Conn. 509 (1989); *Tarnowsky v. Socci*, 75 Conn. App. 560 (2003); *Tarnowsky v. Socci*, 271 Conn. 284 (2004). The Courts have held that an injured person's statute of limitation does not begin to run until two criteria are satisfied: 1) that the injured person is aware of her injury, and 2) that the injured person is aware of the identity of the culpable party. "Discovery rules" are already the law of the land in Connecticut in many other types of cases and it is time to acknowledge them in cases involving latent injuries from carbon monoxide poisoning.

EARLY
♦
LUCARELLI
♦
SWEENEY &
♦
STRAUSS

This Legislature has a long history of remedying unfair and arbitrary statutes of limitation and repose when it comes to latent injuries:

- In 1959, the Legislature eliminated the 5-year statute of repose for workers' compensation claims arising from occupational diseases, largely in response to concerns about long-latent injuries suffered by workers from radium poisoning in local the factories of local watch manufacturers.
- In 1980, the Legislature extended the original 1-year workers' compensation occupational disease statute to 3 years in recognition of the fact that many occupational diseases are latent in nature.
- In 2011, the Legislature extended the Product Liability Act's statute of repose for asbestos cases to 80 years, again in recognition of the fact that asbestos-related injuries are latent in nature.

Thank you for your time and consideration. Please pass SB 920.

Christopher Meisenkothen, Esq.
Early, Lucarelli, Sweeney & Meisenkothen, LLC
New Haven, CT